

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

THE PEOPLE,

Plaintiff and Respondent,

v.

RAYMOND C. GALLEGOS,

Defendant and Appellant.

B285429

(Los Angeles County
Super. Ct. No. VA138261)

APPEAL from a judgment of the Superior Court of
Los Angeles County. John A. Torribio, Judge. Affirmed.

Leonard J. Klaif, under appointment by the Court of
Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief
Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Steven D. Matthews and J. Michael Lehmann,
Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Raymond Gallegos pleaded no contest to second degree murder and was convicted by a jury of carjacking, three counts of robbery, and possession of a firearm by a felon. On appeal, Gallegos contends the evidence was insufficient to support two of the robbery convictions. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

Around 2:00 a.m. on August 30, 2013, Edgar M. was sitting in the driver's seat of his parked car along with three passengers. Maribel L. was in the front passenger seat, Bernice S. was in the rear passenger-side seat, and Evelyn C. was in the rear driver-side seat. Gallegos approached the car on foot, pointed a gun inside the driver's window, and told everyone to get out of the car.

Edgar left his phone in the car at Gallegos's direction. He also left his car keys and wallet. Maribel left her phone in the car because Gallegos "asked us to put it down." Evelyn left her phone and identification in the car.¹ Bernice left her keys, wallet, and phone in one of the car's storage compartments, where they had been before Gallegos approached. Bernice did not hear Gallegos tell her to leave anything in the car, but she did not want to reach for her belongings.

After all four occupants exited, Gallegos drove away in the car. A few hours later, Gallegos shot and killed Raymond F.²

¹ Evelyn was not asked at trial whether Gallegos told her to leave her belongings in the car.

² Due to the nature of the issues raised on appeal, it is unnecessary to set forth the facts related to the non-robbery charges.

Gallegos was charged by information with murder (Pen. Code, § 187, subd. (a));³ count 1), carjacking (§ 215, subd. (a); count 2), robbery of Maribel (§ 211; count 3); robbery of Evelyn (§ 211; count 4); robbery of Bernice (§ 211; count 5); custodial possession of a weapon (§ 4502, subd. (a); count 6); and possession of a firearm by a felon (§ 29800, subd. (a)(1); count 7). Various gang and firearm allegations were also alleged.⁴ The court severed count 6, and the remaining counts were tried to a jury in December 2016.

The jury found Gallegos guilty of carjacking (count 2), the three counts of robbery (counts 3 through 5), and possession of a firearm by a felon (count 7). The jury found true the firearm allegations on counts 2 through 5, and found not true the gang allegation on count 7. The jury indicated it could not reach a verdict on count 1, and the court declared a mistrial on that count. Gallegos subsequently pleaded no contest to second degree murder pursuant to a plea agreement.

The court sentenced Gallegos as follows: on count 1, 15 years to life; on count 2, a consecutive term of 19 years⁵; on

³ All further undesignated statutory references are to the Penal Code.

⁴ As to counts 1 through 5, it was alleged that Gallegos personally used a firearm in the commission of the crimes (§ 12022.53, subds. (b), (d)). As to all counts except count 6, it was alleged that Gallegos committed the crimes for the benefit of a criminal street gang (§ 186.22, subd. (b)). During trial, the court granted Gallegos's motion to dismiss the gang allegations on counts 2 through 5.

⁵ The 19-year term consisted of the upper-term of nine years, plus 10 years for the firearm enhancement (§ 12022.53, subd. (b)).

counts 3, 4, and 5, concurrent terms of 13 years;⁶ and on count 7, a concurrent term of two years. The court awarded Gallegos 1,636 days of custody credit, ordered he make restitution to the victims, and imposed various fines and fees.

Gallegos timely appealed.

DISCUSSION

Gallegos's sole contention on appeal is that the evidence was insufficient to convict him of the robbery counts involving Evelyn and Bernice (counts 4 and 5). We disagree.

A. Standard of Review

“To determine the sufficiency of the evidence to support a conviction, an appellate court reviews the entire record in the light most favorable to the prosecution to determine whether it contains evidence that is reasonable, credible, and of solid value, from which a rational trier of fact could find the defendant guilty beyond a reasonable doubt.” (*People v. Kipp* (2001) 26 Cal.4th 1100, 1128; accord, *People v. Smith* (2014) 60 Cal.4th 603, 617.)

This standard of review applies to claims involving both direct and circumstantial evidence. “We “must accept logical inferences that the jury might have drawn from the circumstantial evidence. [Citation.]” [Citation.] “Although it is the jury’s duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the jury, not the appellate court that must be convinced of the defendant’s guilt beyond a reasonable doubt. [Citation.]” [Citation.] Where

⁶ The 13-year terms on each of these counts consisted of the mid-term of three years, plus 10 years for the firearm enhancements (§ 12022.53, subd. (b)).

the circumstances reasonably justify the trier of fact's findings, a reviewing court's conclusion the circumstances might also reasonably be reconciled with a contrary finding does not warrant the judgment's reversal. [Citation.]' [Citation.]" (*People v. Manibusan* (2013) 58 Cal.4th 40, 87.)

B. Analysis

Gallegos contends that, because there was no evidence that he knew Evelyn's or Bernice's belongings were in the car when he took it, there was insufficient evidence from which the jury could find he intended to deprive them of their property. We disagree.

Robbery is the "felonious taking of personal property in the possession of another, from his person or immediate presence, and against his will, accomplished by means of force or fear." (§ 211.) The act of force or intimidation must be motivated by the intent to steal. (*People v. Anderson* (2011) 51 Cal.4th 989, 994.) Generally, "an intent to permanently deprive someone of his or her property may be inferred when one unlawfully takes the property of another." (*People v. Morales* (1993) 19 Cal.App.4th 1383, 1391.)

In *People v. DeLeon* (1982) 138 Cal.App.3d 602, the court rejected an argument nearly identical to Gallego's. In that case, the defendants were convicted of robbery after taking by force a car that contained valuable coins. The defendants argued, among other things, that they could not be convicted of robbery of the coins because the evidence was insufficient to show they knew of the existence and value of the coins when they took the car. (*Id.* at p. 606.) The court rejected the argument, reasoning that the convictions were sustainable on the theory that "when appellants took the car by force they intended to deprive the

owner permanently of whatever contents of the car appellants found to be of value.” (*Id.* at p. 607.)

Gallegos’s convictions are sustainable on the same theory. Both victims testified that they left their personal belongings in the car when Gallegos ordered them out at gunpoint, after which Gallegos drove away in the vehicle. From this, the jury could have reasonably inferred that Gallegos threatened to use force with the intent to steal both the car and whatever personal property the occupants, including Evelyn and Bernice, left in it. It was not necessary that Gallegos expressly directed the occupants to leave their belongings or that he knew precisely what property they left behind. (See *People v. DeLeon*, *supra*, 138 Cal.App.3d at pp. 606–607; cf. *In re Jesus O.* (2007) 40 Cal.4th 859, 868 [mental state for theft is “intent to steal, not an intent to steal specific property”].)

Gallegos insists *DeLeon* is distinguishable because that case involved the robbery of personal property belonging only to the owner of the car, whereas this case also involves personal property belonging to passengers. He contends that, unlike the owner’s property, it is not reasonable to expect that a car would contain personal property belonging to its passengers.⁷

⁷ Gallegos notes that the *DeLeon* court analogized to a case where a defendant who demanded a victim’s wallet was convicted of robbery, despite the fact that he threw away the wallet after taking out its contents. (See *People v. DeLeon*, *supra*, 138 Cal.App.3d at p. 607, citing *People v. Hall* (1967) 253 Cal.App.2d 1051, 1054.) Gallegos contends it does not follow that the defendant also would have been guilty of robbing a third party whose property the victim was holding in his wallet at the time of the robbery.

Therefore, he suggests, there must be some additional evidence showing he was specifically aware that Evelyn's and Bernice's personal property was in the vehicle in order for the jury to find he intended to steal from them.

Gallegos's attempt to distinguish *DeLeon* on this basis is unavailing. Contrary to his contentions, we think it reasonable to expect that passengers would have with them certain personal property—especially items such as phones, backpacks, and purses—that they would leave behind when directed to exit a vehicle by a threat of force. Accordingly, the jury could have reasonably inferred that, when Gallegos ordered Evelyn and Bernice out of the car at gunpoint, he expected they would leave behind their personal property, which he intended to steal.

Even if the reasoning in *DeLeon* is not applicable to this case, there was nonetheless substantial evidence that Gallegos intended to steal from Evelyn and Bernice. Edgar testified that Gallegos instructed him to leave his phone in the car. Maribel similarly testified that she left her phone in the car because Gallegos “asked us to put it down.” The jury could have reasonably inferred from this testimony that in making these demands, Gallegos was speaking to all the occupants of the car, and not just Edgar and Maribel. Indeed, there is no reason to believe that Gallegos would want Edgar and Maribel to leave their belongings in the car, but not Evelyn and Bernice. Although Bernice testified that Gallegos did not instruct her to leave her belongings in the car, the jury could have reasonably concluded she simply did not hear his demand because she was in the backseat. If the jury viewed the testimony in this way, it provided sufficient evidence that Gallegos threatened the use of

force while intending to permanently deprive Evelyn and Bernice of their personal property.

DISPOSITION

The judgment is affirmed.

BIGELOW, P. J.

We concur:

GRIMES, J.

WILEY, J.